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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/901,713	07/28/97	BELL	A 400-009

EXAMINER

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FOSTER, J

ART UNIT	PAPER NUMBER
3728	12

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DATE MAILED: 08/25/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/901,713	Applicant(s) Bell
	Examiner J. Foster	Group Art Unit 3728

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *three* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-31* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-31* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindsay (4,993,551) in view of Baumgartner (3,678,977). In the reference of Lindsay, the tool holder 10 may be considered to define a utility apron. The apron/holder includes a shell 20,22,24 with a lip portion 20 for contacting the lip of a bucket 12 to support the shell on the bucket. The exterior surface of the apron is at 24 and includes a plurality of pockets 28 disposed thereon. In addition, the interior surface of the apron is at 22 and includes a plurality of pockets 26 disposed thereon.

Although the reference of Lindsay does not disclose specific sizes for the pockets 26 and 28 of the holder 10, it would have been obvious to have made the pockets with any sizes desired, including the sizes claimed by Applicant, since it has been held that the particular size of an article generally will not support patentability. In re Rose, 105 USPQ 237, 240 (CCPA 1955); In re Yount, 80 USPQ 141.

Although the reference of Lindsay does not disclose a resilient pocket opening, the reference of Baumgartner suggests

at element 27 and column 2, lines 13-19 that the opening edge of a pocket may be provided with and elastic band for the purpose of retaining objects placed into the pocket. Baumgartner further suggests in lines 22-24 that retained objects may include elongated hand implements (e.g., a pen or pencil) and cleaning items (e.g., cleansing tissues). Accordingly, it would further have been obvious in view of Baumgartner to have provided elastic bands at the openings of the pockets 26,28 of Lindsay for the purpose of resiliently retaining hand and cleaning implements in the pockets.

Although the reference of Lindsay does not disclose pleats, the reference of Baumgartner also suggests at 28 and at column 2, lines 20-22 that pleats may be provided in the sides of a resilient pocket (23,25) for the purpose of allowing expansion of the pocket to receive items in the pocket. This appears to correspond to Applicant's function for pleats. Therefore, it would further have been obvious in view of Baumgartner to have provided pleats in said pockets of Lindsay for the purpose of expanding the openings so as to receive items in the pockets.

3. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-31 above, and further in view of Yoo (5,431,265). The reference of Yoo not only teaches using elastic in a pocket opening for retaining an item in the pocket but using such an elastic for retaining the item in the pocket opening (col. 4, line 68 through col. 5, line 3. This appears to correspond to

Applicant's function for resilient pocket openings. Accordingly, it further would have been obvious in view of the suggestion of Yoo to have provided elastic along the opening edge of the pockets of Lindsay for the purpose of retaining items in the pocket openings.

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. To the extent that Applicant may assert that Baumgartner and Yoo are non-analogous as being not to utility aprons for buckets, an inventor is presumed to not only to have full knowledge of the prior art in the field of endeavor but to also have the ability to select and utilize knowledge from other arts reasonably pertinent to the inventor's particular problem. In re Antle, 170 USPQ 285, 287-288 (CCPA 1971). Each of the references of Baumgartner and Yoo expressly teach that an elastic pocket opening will retain an item in the pocket. Moreover, the reference of Yoo further teaches that an elastic pocket opening will retain an item in the pocket opening. Accordingly, the teachings of Baumgartner and Yoo are reasonably pertinent to Applicant's particular problem: retaining items in pockets. Therefore, the references of Baumgartner and Yoo are analogous art.

With respect to Applicant's argument regarding pocket sizes, the Lindsay reference already teaches pockets having various sizes for various items. Applicant urges that the sizes claimed by Applicant must be considered patentable because cleaning supplies, and not tools as taught by Lindsay, will be

the items placed in the pockets, and the sizes correspond to cleaning supplies and not tools. However, Applicant fails to claim the cleaning supplies in the claim in the apron, and Applicant fails to show evidence that the sizes claimed are critical; that is, all other sizes not claimed will not work. Inasmuch as cleaning supplies come in a plethora of different sizes, the examiner would tend to believe that the sizes claimed by Applicant are not critical and would not provide patentable support. Applicant has argued that each claim be treated as a whole. However, Applicant has failed show that size has a unique relationship to other features claimed, which is not found in the references of applied prior art. In fact, Lindsay already sufficiently discloses making pockets in a utility apron for a bucket, with various pocket sizes.

Although Applicant has argued that each of the claims 3-8 should be viewed independently, the basis and rationale for rejection is the same. Thus the claims have been addressed together, which is appropriate since Applicant's arguments have not argued claims 3-8 separately and differently.

Finally, Applicant has argued that the decisions In re Yount and In re Rose are not pertinent to Applicant's claims since the inventor in Yount had disclosed other sizes. But how is Rose not pertinent in view of Yount? How is Yount different from Applicant by disclosing different sizes? Applicant not only discloses different sizes but claims them. Finally, it appears that Applicant has ignored the holding in Yount that "mere size is not ordinarily a matter of invention", having the contemporary meaning that size is not ordinarily a *patentable*

matter of invention. This statement makes Yount clearly pertinent.

5. For contacting the PTO by phone, the following contact numbers may be used:

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8/23/99

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August 23, 1999